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§ 2 is an enumeration or definition of the judicial power granted in § 1. In the same decision in which the court pointed out so clearly the limitations on Congress, it seems to have stated its own jurisdiction in terms wider than ever before. It will be interesting to observe whether the court will carry out consistently the doctrine here expressed, and if it does, what the effect will be on its jurisdiction.

STATE COMPELLING A CARRIER TO FURNISH A PARTICULAR FACILITY. — The theory of state control of intra-state commerce has long been established.¹ It is also settled that the exercise of this power is subject to the restrictions of the Fourteenth Amendment.² The primary duty of a common-carrier is to furnish adequate facilities for the public service which it has undertaken.³ Whether or not it falls within this duty to furnish some particular facility must depend on many considerations, chief among which are the cost to the carrier and the necessity of the public.⁴ The necessary effect of the enforcement of the duty to furnish an additional facility is to increase the cost of service rendered. If this new facility should produce directly a return sufficient to cover its cost and allow to the carrier a reasonable profit, no constitutional difficulty is encountered. But it is highly probable that a compelled facility will not be self-supporting. Such a case arose recently when a state ordered a carrier to operate a passenger train in order to make an important connection with a train on another route. Although the mere cost of operation exceeded considerably the probable returns from passengers carried on this train, the Supreme Court of the United States held that the enforcement of the order did not constitute a taking of property without due process of law, on the ground that the carrier would still be able to realize a reasonable profit on its entire intra-state business. *Atlantic Coast Line R. R. Co. v. North Carolina Corporation Commission*, 206 U. S. 1. The contention that compulsion to furnish a non-remunerative facility constitutes a taking of property without due process of law must rest on the theory that the carrier is entitled to adequate compensation for each item of service rendered. If this be true, all hope of efficient regulation of public service companies is at an end. The utter impossibility is apparent of devising a scheme of rates high enough to permit a profit on the carriage of each item of commerce over all possible divisions of the road, which will at the same time afford needed protection to shippers.⁵

In determining whether or not an order which results in increasing the cost of service is confiscatory, the cost of the performance of that service may properly be set off against the total returns from its fulfilment. It is a necessary result of this rule that losses which the carrier may incur on certain individual shipments will be distributed among other users of the service. If in the application of the rule only the total cost and earnings of the carrier should be considered, this burden might become very oppressive, since it would permit the state to compel the rendering of one or more distinct classes of service at a loss which in the end would be borne by users

¹ *Gibbons v. Ogden*, 9 Wheat. (U. S.) 1, 194; *Smyth v. Ames*, 169 U. S. 466, 526.

² See *Smyth v. Ames*, *supra*.

³ *Cf. People v. St. Louis, etc., R. R. Co.*, 176 Ill. 512, 524.

⁴ See *Wisconsin, etc., Railroad v. Jacobson*, 179 U. S. 287, 300.

⁵ *Cf. St. Louis, etc., Ry. Co. v. Gill*, 156 U. S. 649, 665.

of other branches of the service.⁶ This result, however, does not necessarily follow from the reason which supports the rule. The public duty of the carrier is a multiple one, a duty to adequately perform each class of service which it undertakes, and the courts may well require that the carrier shall not be compelled to increase the cost of performance of any individual class of service to such a point that it will be unprofitable. In the matter of confiscatory rates the Supreme Court has shown a disposition to hold confiscatory a rate on a single class of merchandise which will not allow to the carrier adequate compensation for that class of service.⁷ This principle applies equally well when the state attempts to increase the cost of a service by compelling the furnishing of additional facilities. Thus an order to operate a particular passenger train at a loss is not confiscatory if the total receipts from passenger traffic — in which class of service the order properly belongs — supply that reasonable profit which other persons are permitted to make in their business ventures.

THE TAXABLE SITUS OF PROMISSORY NOTES. — Tangible personal property is taxable where actually located, and if so taxed the maxim *mobilia sequuntur personam* cannot be invoked to give an artificial situs at the owner's domicile.¹ The law as to the taxation of intangible personal property is in confusion. Since a debt, as such, can have no actual situs, the standard rule is to tax the asset to the creditor at his domicile.² But when the credit is evidenced by some tangible object, such as a note or a bond, an attempt to tax this object itself is frequently made. That credits in the form of public securities, state and municipal bonds, and bank notes, may be given a taxable situs at the place where they are found, is well recognized.³ The tendency has been to extend this doctrine to all evidences of debts which have assumed concrete form. Mr. Justice Brewer has said: "notes and mortgages are of the same nature [as bonds, etc.] . . . and have such a concrete form that we see no reason why a state may not declare that if found within its limits they shall be subject to taxation."⁴ This principle, declared to be law by numerous judges and text books,⁵ receives a serious setback by a recent decision of the Supreme Court that the notes of an Ohio debtor, held in Indiana by the agent of the New York creditor, could not be given a taxable situs in Indiana. *Buck v. Beach*, 206 U. S. 392. The court returns to the old distinction between notes and specialties, treating the former as mere evidences of debt and not as taxable property in themselves. But why one rule should be applied to a municipal bond and another to a note is difficult to understand. Both are evidences of a debt and have a tangible form and a marketable value, and both are for many purposes treated as tangible property. Thus notes are regarded as being

⁶ *Smyth v. Ames*, *supra*, 540, 541, holding that a state may not justify low intrastate rates on the ground of large interstate profits.

⁷ *Minneapolis, etc., R. R. Co. v. Minnesota*, 186 U. S. 257.

¹ *Union, etc., Co. v. Kentucky*, 199 U. S. 194. See 20 HARV. L. REV. 138.

² *Kirtland v. Hotchkiss*, 100 U. S. 491.

³ See *State Tax on Foreign Held Bonds*, 15 Wall. (U. S.) 300, 324; *Scottish, etc., Co. v. Bowland*, 196 U. S. 611.

⁴ *New Orleans v. Stempel*, 175 U. S. 309, 322.

⁵ See *Jefferson v. Smith*, 88 N. Y. 576, 585; *Judson, Taxation*, § 394; *Gray, Lim. of Taxing Power*, § 86.